STATE OF MICHIGAN

COURT OF APPEALS

MADISON NATIONAL BANK, a/k/a PEOPLES STATE BANK,

Plaintiff-Appellant,

v

HARVEY GOLDMAN, INC., d/b/a WORLDWIDE EQUIPMENT COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 13, 2003

No. 235087
Wayne Circuit Court
LC No. 98-830197-CZ

Before: Hoekstra, P.J., and Smolenski and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's June 1, 2001 judgment for defendant following a bench trial. We vacate the trial court's no cause judgment and remand for clarification and reconsideration of the priority issue.

This conversion action arose when defendant provided machinery to a struggling company called GMR Plastics (GMR). Defendant repossessed and sold the machinery after a complex financing scheme anticipated by defendant, GMR, and a leasing company called RDK&Z fell through. Plaintiff held a security interest in GMR's equipment and claims a right to the machinery's proceeds.

Plaintiff argues that the parol evidence rule precluded the trial court from considering evidence that contradicted a letter sent from defendant to GMR. Plaintiff contends that the letter's unambiguous language evinces a sales contract where defendant promised to sell the disputed machines to GMR.

Whether the trial court properly applied the parol evidence rule is a question of law that we review de novo. *Glenwood Shopping Center Ltd Partnership v K Mart Corp*, 136 Mich App 90, 99; 356 NW2d 281 (1984). In this case, plaintiff may not assert the parol evidence rule because it is a stranger to any contract between defendant and GMR. *Denha v Jacob*, 179 Mich App 545, 550; 446 NW2d 303 (1989). Even if we adopted the opposite rule as plaintiff urges, we note that the parol evidence rule does not prevent the evidence plaintiff finds most objectionable because the parties did not intend the letter to be a complete expression of their agreement, and thus, consideration of parol evidence to determine whether the "unambiguous" letter was an integrated writing was proper. *NAG Enterprises, Inc v All State Industries, Inc*, 407

Mich 407, 410-411; 285 NW2d 770 (1979). Accordingly, the trial court did not err when it considered parol evidence that the letter from defendant to GMR did not constitute a sales contract and construed the letter contrary to its plain terms. *Id*.

Plaintiff also argues that the trial court erred when it determined that plaintiff held an inferior property interest in the machinery. We review de novo a trial court's application of priority law. *Roan v Murray*, 219 Mich App 562, 565; 556 NW2d 893 (1996). However, a trial court's factual findings are reviewed for clear error. MCR 2.613(C); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). Plaintiff asserts that the trial court found facts which, if true, should have resulted in a judgment in its favor.

In particular, plaintiff notes that the trial court found that defendant did not sell GMR the equipment, it simply loaned GMR an amount of money. However, the trial court's conclusion that this was a loan and not a sale is irrelevant. Because the trial court was prevailed upon to simply classify the transaction as a sale or loan, it understandably failed to specifically answer the crucial factual question: did defendant and GMR intend the machines to secure GMR's repayment of a $154,000 loan or any other GMR obligation, or did defendant constantly retain at least a lessor's ownership right to retrieve the machines?

The trial court found that defendant repossessed the equipment when the loan was not repaid. If the trial court believed that defendant loaned GMR the money to obtain the machines, then, applying the former version of the Uniform Commercial Code's Article 9 in effect at the time,[1] we find that this scenario clearly demonstrates a secured transaction where the equipment secured the loan, creating a purchase money security interest in defendant. MCL 440.9107(b); *NBD-Sandusky Bank v Ritter*, 437 Mich 354, 361; 471 NW2d 340 (1991). Defendant's purchase money security interest would have arisen after plaintiff secured and perfected its interest, and defendant did not subsequently permanently perfect its interest; thus, establish its priority. MCL 440.9312(5). Based on these circumstances, plaintiff should have prevailed because defendant never perfected its interest. MCL 440.9301.

We are aware that the trial court specifically rejected plaintiff's argument that the loan created a purchase money security interest in defendant. The trial court stated that it did not make sense to consider the money as a loan for GMR to buy the machines because defendant knew of GMR's precarious financial situation and that GMR had defaulted in its payments to US Bancorp for the machines' lease not two months before. However, this conclusion cannot be squared with the trial court's explicit statement that it found the transaction was a loan of money, not equipment.

The trial court also found that defendant anticipated a larger transaction involving RDK & Z, where defendant would sell the machinery to RDK & Z, who would then lease the equipment back to GMR. The trial court found that defendant only provided the machines to GMR to encourage the deal with RDK & Z. The trial court further found that defendant would

[1] Article 9 was revised after the trial court entered its judgment. However, the revised version does not apply to actions commenced before its adoption. MCL 440.9702 (revised); MCL 440.9709 (revised). Therefore, the statutory citations refer to the applicable provisions as they existed before the revision.

not have permanently transferred the machinery directly to GMR without RDK & Z's financial backing. In the end, the larger financing transaction never materialized. Hence, the trial court indicated that defendant never intended to take a security interest in the machines, only temporarily leasing them to GMR.

If defendant and GMR never entered into a transaction creating a security interest in the machines, then Article 9 does not apply. MCL 440.9102. If defendant only loaned the machines to GMR through an informal lease, then defendant's ownership interest would override plaintiff's security interest and conversion would not apply. MCL 440.2907(1). Under either of these circumstances, defendant should have prevailed.

Therefore, we are presented with a record which appears to contain contradictory factual findings. We cannot determine whether the court clearly erred in its factual findings because the precise nature of which scenario the trial court found to be true is unclear. Accordingly, we remand for reconsideration of the priority issue according to the legal framework we have provided above and a clear enunciation of the trial court's factual findings. In light of our decision to remand, we do not reach plaintiff's remaining argument regarding damages.

Vacated and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski
/s/ Karen M. Fort Hood